

LAW OFFICES
HALEY BADER & POTTS P.L.C.

4350 NORTH FAIRFAX DR., SUITE 900

ARLINGTON, VIRGINIA 22203-1633

TELEPHONE (703) 841-0606

FAX (703) 841-2345

E-MAIL: haleybp@haleybp.com

JOHN M. PELKEY
ADMITTED IN D.C. AND VA

DIRECT DIAL
(703) 841-3930

E-MAIL ADDRESS
Jpelkey@haleybp.com

April 26, 1999

OUR FILE NO.
1673-101-63

RECEIVED

APR 26 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Portals II
445 12th Street, S.W.
Rm. TW-B204
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Station
Ironton and Salem, Missouri
MM Docket No. 99-71
RM-9362

Dear Ms. Salas:

Transmitted herewith are an original and four copies of the Comments of Dockins Communications, Inc. in the above-referenced proceeding.

If you have any questions, please contact the undersigned.

Sincerely,


John M. Pelkey

JMP/ned

Enclosures: (5)

No. of Copies rec'd
List A B C D E

0+4

Before The
Federal Communications Commission
Washington, D.C. 20554

RECEIVED
APR 26 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 99-71
FM Broadcast Stations.)	RM-9362
(Ironton and Salem, Missouri))	

To: Chief, Allocations Branch

Comments of
Dockins Communications, Inc.

Dockins Communications, Inc. ("Dockins"), licensee of Station KYLS-FM, Ironton, Missouri, hereby submits its Comments with respect to the above-captioned rulemaking. As will be demonstrated below, the rulemaking proposal is in the public interest and thus should be adopted. In support of the proposal, Dockins states as follows:

I. **Background.**

By Petition for Rulemaking filed on July 22, 1998, Dockins, together with Ultra-Sonic Broadcast Stations, Inc. ("Ultra-Sonic"), licensee of KKID(FM), Salem, Missouri, requested that the Commission institute a rulemaking proceeding to amend Section 73.202(b) of the Commission's rules, the Table of FM Allotments, so as to (1) substitute

FM Channel 240C3 for Channel 224A at Ironton, Missouri; (2) substitute FM Channel 225C3 for Channel 240A at Salem, Missouri; and (3) modify the license of KYLS-FM to specify operation on 240C3 and the license of KKID(FM) to specify operation on 225C3.

In their joint petition, Dockins and Ultra-Sonic explained that adoption of the proposal would result in significant public interest benefits. The area encompassed within the KYLS-FM 60 dBu contour would increase from 1,846.7 square kilometers to 4,681.8 square kilometers, which constitutes an increase of 153%, and the population served would increase from 15,802 persons to 38,933 persons, for an increase of 146%.¹ Similarly, the area within the 60 dBu contour of Station KKID(FM) would increase from 974.8 square kilometers to 4,755.4 square kilometers, for an increase of 388%, and the population served would increase from 11,410 persons to 49,796 persons, for an increase of 336%.² Grant of the proposal would result in no loss of service.³ Moreover, because neither community is located in the vicinity of an urbanized area, the proposal raises no issues concerning proper application of the Commission's allocation criteria.

¹ Petition for Rulemaking at 4.

² Petition for Rulemaking at 4-5.

³ Petition for Rulemaking at 5.

By *Notice of Proposed Rulemaking* released March 5, 1999 ("*NPRM*"), the Commission established April 26, 1999, as the date for the submission of Comments with respect to the proposal. Concurrently with the submission of these Comments, Ultra-Sonic is filing its "Comments and Statement of Continuing Interest" wherein it supports the proposal. As a result, both parties are timely submitting comments in support of the proposal as required by Paragraph 2 of the Appendix to the *NPRM*.

II. Comments and Statement of Continuing Interest.

As was explained in the Petition for Rulemaking and as has been summarized above, adoption of the proposal would have significant public interest benefits inasmuch as the proposal would permit a significant increase in the populations and areas served by both KYLS-FM and KKID(FM). Moreover, the proposed revisions can be made in complete compliance with the Commission's rules.

KYLS-FM is precluded from upgrading to Class C3 status on its current channel because of significant short-spacing to Station WVZA, Herrin, Illinois; KMAL(FM), Malden, Missouri; and applications for new stations at Poplar Bluff, Missouri. In fact, as was demonstrated in Exhibit 8 of the Engineering Statement attached to the Petition for Rulemaking, which is incorporated herein by reference, the only channel on which KYLS-FM can be upgraded to Class C3 status is Channel 240,

and even that channel can be used only if KKID(FM) in Salem, Missouri also changes channel. The only channel on which KKID(FM) can be upgraded to Class C3 status is Channel 225, which, of course, requires KYLS-FM to change frequency. Because Channel 240C3 cannot be used at Ironton while Channel 240A is operating in Salem and because Channel 225C3 cannot be used in Salem while Channel 224A is operating in Ironton, and because there are no other alternate channels available for the upgrades either at Ironton or Salem, the proposal creates a mutually-exclusive relationship as contemplated by Section 1.420(g)(3) of the Commission's rules and therefore is exempt from the consideration of competing proposals. *See Modification of FM Broadcast Licenses to Higher Class Co-Channels or Adjacent Channels*, 60 RR 2d 114, 120 (1986). *See also Ashdown and DeQueen Arkansas, Notice of Proposed Rule Making*, 12 FCC Rcd. 17388 (1997), *Report and Order*, 13 FCC Rcd. 8544 (1998).

As is required by Paragraph 2 of the Appendix to the *NPRM*, Dockins hereby restates its intention to apply for the modified facilities for KYLS-FM, and will promptly construct such facilities upon grant of the application. Ultra-Sonic is making a like commitment in its "Comments and Statement of Continuing Interest".

III. Conclusion.

The substitutions of Channel 240C3 for Channel 224A at Ironton and the corresponding substitution of Channel 225C3 for Channel 240A at Salem will result in significant public interest benefits. A total of 61,517 persons will receive additional aural service as a result of the adoption of the proposal and no loss of service will occur. Accordingly, Dockins respectfully requests that the Commission adopt the proposed rulemaking and amend Section 73.202(b) of the Rules to:

- (1) Substitute FM Channel 240C3 for Channel 224A at Ironton;
- (2) Substitute Channel 225C3 for Channel 240A at Salem; and
- (3) Modify the licenses of KYLS-FM and KKID(FM) accordingly.

Respectfully submitted,

Dockins Communications, Inc.

By: _____


John M. Pelkey
Its Attorney

HALEY BADER & POTTS P.L.C.
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633

703/841-0606

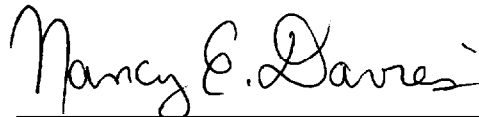
Date: April 26, 1999

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley Bader & Potts P.L.C., hereby certifies that the foregoing document entitled "Comments of Dockins Communications, Inc." was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered, to the following:

*Ms. Kathleen Scheuerle
Federal Communications Commission
Mass Media Bureau
Portals II
445 12th Street, S.W.
Room 3-A247
Washington, D.C. 20554

Christopher D. Imlay, Esq.
Booth Freret Imlay & Tepper, PC
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D.C. 20016-4120
Attorney for Ultra-Sonic Broadcast
Stations, Inc.



Nancy E. Davies

Date: April 26, 1999

*Hand Delivered